

Commission Decision (EU) 2015/1074 of 19 January 2015 on State aid SA.35842 (2014/C) (ex 2012/NN) implemented by Italy — Additional public service compensation for CSTP (notified under document C(2015)74) (Only the Italian text is authentic) (Text with EEA relevance)

- Article 1 The state aid amounting to EUR 4 951 838 in...
- Article 2 (1) The Italian Republic shall recover the aid referred to...
- Article 3 (1) Recovery of the aid referred to in Article 1 shall...
- Article 4 (1) Within two months following notification of this Decision, Italy...
- Article 5 This Decision is addressed to the Italian Republic.
Signature

Changes to legislation: There are currently no known outstanding effects for the Commission Decision (EU) 2015/1074. (See end of Document for details)

- (1) Commission Decision of 20 February 2014 on State aid SA.358423 (2012/NN) — Italy — PSO compensation for CSTP, [OJ C 156 \(23.5.2014, p. 39\)](#).
- (2) The Commission recalls that pursuant to Article 15 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union ([OJ L 83, 27.3.1999, p. 1](#)), the powers of the Commission to recover aid are subject to a limitation period of 10 years, beginning on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme. Any action taken by the Commission or by a Member State, acting at the request of the Commission, with regard to the unlawful aid interrupts the limitation period.
- (3) Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway ([OJ L 156, 28.6.1969, p. 1](#)).
- (4) Article 4(1) of Regulation (EEC) No 1191/69 states that: ‘It shall be for transport undertakings to apply to the competent authorities of the Member States for the termination in whole or in part of any public service obligation where such obligation entails economic disadvantages for them’. Article 6(3) reads: ‘The competent authorities of the Member States shall take decisions within one year of the date on which the application is lodged as regards obligations to operate or to carry, and within six months as regards tariff obligations. The right to compensation shall arise on the date of the decision by the competent authorities...’.
- (5) *Legge Regionale 25 gennaio 1983, n. 16 Interventi regionali in materia di servizi di trasporto pubblico locale per viaggiatori* (Regional measures for local passenger transport services) available at: http://jtest.ittig.cnr.it:8080/cocoon/regioneCampania/xhtml?css=4&doc=/db/nir/RegioneCampania/1983/urn_nir_regione.campania_legge_1983-01-25n16&datafine=19830205
- (6) Article 10 of Regulation (EEC) No 1191/69 provides that the amount of compensation related to an obligation to provide transport services is to be determined as the difference between the reduction of revenues and the reduction of costs resulting from the termination of the corresponding obligation during the period concerned.
- (7) Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg*, [2003] EU.C.2003.415.
- (8) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 ([OJ L 315, 3.12.2007, p. 1](#)).
- (9) *Modelli E*, namely the documents based on the accounts of the company containing the information necessary for the annual calculation of the public contribution.
- (10) Case C-527/12 *Commission v Germany*, EU:C:2014:2193, paragraph 56 and the case-law cited. See also Case C-119/05 *Lucchini*, EU:C:2007:434, paragraph 59, described in recital (94) below.
- (11) Case C-280/00 *Altmark Trans v Regierungspräsidium Magdeburg*, [2003] EU:C:2003:415, paragraphs 87 and 88.
- (12) Case C-172/03 *Heiser*, EU:C:2005:130, paragraph 55.
- (13) Case T-157/01 *Danske Busvognmænd*, [2004] EU:2004:76, paragraphs 77, 78 and 79.
- (14) Case C-504/07 *Associação Nacional de Transportadores Rodoviários de Pesados de Passageiros (Antrop) and Others v Conselho de Ministros, Companhia Carris de Ferro de Lisboa SA (Carris) and Sociedade de Transportes Colectivos do Porto SA (STCP)*, [2009] EU:C:2009.290.
- (15) Case 156/77 *Commission v Belgium*, [1978] ECR 1881, paragraph 10.
- (16) Regulation (EEC) No 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway ([OJ L 130, 15.6.1970, p. 1](#)).
- (17) The Commission refers in this respect to the reasoning developed in recitals 307 to 313 of its Decision 2011/3/EU of 24 February 2010 concerning public transport service contracts between the Danish Ministry of Transport and Danske Statsbaner (Case C41/08) (ex NN 35/08) ([OJ L 7, 11.1.2011, p. 1](#)). That Decision was annulled by the General Court in Case T-92/11 *Jørgen Andersen v European Commission*, [2013] not yet published, and an appeal against that judgment is currently pending before the Court of Justice in Case C-303/13 P. The outcome of that appeal is not relevant for the outcome of the present case, since the General Court confirmed in the judgment under appeal that it is the date on which the effects of the disbursed aid occurred which determines which set of rules applies. In this case the aid was paid on 21 December 2012, so the rules, principles and criteria

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- for assessing the compatibility of state aid which are in force at the date on which the Commission takes its decision should be applied (see, paragraph 39 of that judgment).
- (18) Case C-334/0 P *Commission v Freistaat Sachsen*, [2008] ECR I-9465, paragraphs 50 to 53; Case T-3/09 *Italy v Commission*, [2011] ECR II-95, paragraph 60.
- (19) For example tort or unjust enrichment.
- (20) Joined Cases 106 to 120/87, *Asteris AE and others v Greece and EEC*, EU:C:1988:457.
- (21) See Commission Decision of 16 June 2004 on Dutch aid in favour of Akzo Nobel in order to minimise chlorine transports (Case N 304/2003), summary notice in [OJ C 81, 2.4.2005, p. 4](#); see also Commission Decision of 20 December 2006 on Dutch aid for relocation of car dismantling company Steenbergen (Case N 575/2005), summary notice in [OJ C 80, 13.4.2007, p. 1](#).
- (22) Case C-119/05 *Lucchini*, EU:C:2007:434, paragraph 59.
- (23) *Ibid*, paragraph 61.
- (24) Opinion of 28 April 2005 in Joined Cases C-346/03 and C-529/03 *Atzori*, EU:C:2005:256, paragraph 198.
- (25) Case T-384/08 *Elliniki Nafpigokataskevastiki AE Chartofylakeiou v Commission*, EU:T:2011:650, and Case T-565/08 *Corsica Ferries v Commission*, EU:T:2012:415, paragraphs 23, 114 and 120 to 131. See also, by analogy, Case C-111/10 *Commission v Council*, EU:C:2013:785, paragraph 44.
- (26) Case C-70/72 *Commission v Germany*, [1973] ECR 813, paragraph 13.
- (27) Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission*, [1994] ECR I-04103, paragraph 75.
- (28) Case C-75/97 *Belgium v Commission*, [1999] ECR I-3671, paragraphs 64 and 65.
- (29) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union ([OJ L 83, 27.3.1999, p. 1](#)).
- (30) See Article 14(2) of Regulation (EC) No 659/99.
- (31) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, [OJ L 140, 30.4.2004, p. 1](#).

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